U.S.-Russia Business Council Response to USTR Request for Comments Concerning Russia’s Implementation of Its WTO Obligations
September 28, 2015

Introduction

The U.S.-Russia Business Council (“USRBC” or “Council”) is pleased to once again respond to the U.S. Trade Representatives request to provide comments on Russia’s implementation of its World Trade Organization (WTO) obligations. At a time when a complex geopolitical climate has led to a cycle of sanctions and counter-sanctions that impact bilateral trade and investment, USRBC is committed to continuing to serve our members’ interests in the Russian and U.S. markets to address issues that affect their businesses and to encourage greater transparency and predictability in accordance with WTO rules.

Our comments outlined below encompass a range of policies and include draft proposals we are currently tracking that highlight improvements in the implementation of Russia’s WTO commitments and the general investment environment but also raise concerns about Russia’s WTO compliance.

Customs and Other Import Regulations

- **Improvements**
  
  Russia has taken steps to improve tariff policy and regulation over the past year by transferring the powers of the Federal Tariff Service to the Federal Anti-Monopoly Service, an agency known for its professionalism and dedication to competition policy.

  Russia appears to have met some of its customs duty reduction obligations ahead of schedule on certain types of machinery and engines. We would also like to recognize that, for certain equipment, Russia’s has reduced its import duties to levels below its agreed bound rates.

- **Customs Valuation of Machinery and Components**
  
  A lack of clear regulations on import valuation continues to present issues for imports of U.S. machinery and components. An administrative ruling on valuation that would offer exemptions to such equipment is offering little relief as the manufacturer’s paperwork obligations are significant. Russian Customs officials continue to dispute the declared import values of these products, utilizing reference prices to apply higher tariffs, often assessing values on a case-by-case basis. These inflated valuations are frequently resulting in over taxation for importers of these products.
• **Imposition of Specific Duties Resulting in Tariffs Exceeding Russia's Bound Rates**
  In May 2013, Russia began applying specific duties in addition to *ad valorem* tariffs to more than 370 items. This development was troubling because, for many products, the effective tariff rate exceeds Russia's bound rates. Despite Russia's assurances that it would rectify this, our members have not seen the necessary changes.

**National Treatment**

The following policies in Russia raise concern about Russia's WTO national treatment obligations:

- **New Payment System Requirements and Penalties for Foreign Processors.** Russia's new restrictions on credit card payment processing networks, which went into effect on March 1, 2015, target only foreigners and require foreign processors to conduct payment transactions through Russia's National Payment Card System or post cash collateral for potential service suspensions.

- **Recycling Fee on Imported Equipment.** The Russian government continues to consider a proposal to apply a recycling fee to imports of off-road machinery/equipment, specifically construction equipment. As we understand it, the proposal would exempt domestic equipment. The fee's level is significant and could offset Russia's WTO tariff reduction commitments.

- **New Import Tax for Off-Road Machinery?** We understand that the Russian government is considering assessing a new import tax on off-road machinery and is currently developing the criteria for such a tax. We will be following this development.

- **Preferential Leasing Terms For Domestic Machinery.** The Russian government has worked to support domestic agricultural machinery producers by subsidizing equipment leases for farmers who purchase machinery manufactured in Russia.

**Investment Measures and Localization Policies**

• **Improvements in the Investment Environment**
  USRBC would like to point out that Russia has taken positive steps towards improving its investment environment by advancing in the World Bank's 2015 rankings of Starting a Business (surging 24 places) and Registering Property (surging 16 places). In Moscow and St. Petersburg, businesses no longer need to deposit charter capital before registering a company, nor must a company notify the tax authorities when opening a bank account. Also, authorities have shortened the timeline for processing property registrations in Moscow and St. Petersburg and notarization is no longer required when one is seeking to transfer property. The USRBC welcomes these liberalizations.

• **Localization Measures to Incentivize Local Production**
  Separately, the business community has been carefully tracking Russia's policies and stated intentions to expand its localization policies.

- **Personal Data Law.** USRBC and its member companies are concerned about the requirements and ambiguities of Russia's recent amendments to the law “On Personal Data” (signed into law
by President Putin on July 22, 2014). The law requires any company operating in Russia that collects information about Russian citizens online to store and process such data on servers located in Russia. Although the law applies to both Russian and foreign firms, the law’s requirements to build or lease data center space in Russia is cost-prohibitive for smaller U.S. companies and financially onerous for large U.S. companies that store data at sophisticated and centralized locations abroad. The data localization requirement thus creates an unfair advantage for Russian service providers vis-à-vis non-Russian service providers. The Russian government has been slow in providing guidance regarding the new law, issuing its first formal clarifications only one month before the law’s entry into force on September 1, 2015. USRBC welcomes greater clarity from the Russian government regarding the implementing regulations for this law, particularly regarding its scope of application and the treatment of cross-border data. USRBC also welcomes USTR’s assessment of the WTO legality of this measure.

Self-Propelled Machinery Certificates. The Russian Ministry of Industry and Trade and State Duma deputies are drafting legislation to change Rostechnadzor’s criteria for issuance of self-propelled machinery certificates (the proposal would amend Decree 1995 N.460). The change would necessitate proof of manufacturing operations in Russia, and would thus deny certificates to non-Russian self-propelled machinery assembled in Russia. As the certificates are necessary for operating combine harvesters in Russia, this legislative change presents a requirement to localize production.

Intellectual Property Rights

USRBC recognizes that Russia has made significant progress on intellectual property rights. However, enforcement of Russia’s legal and regulatory base for intellectual property rights protection continues to be a concern – particularly in the pharmaceutical and high-tech sectors.

Trade Remedies

- Eurasian Economic Union Safeguard Measure on Combine Harvesters.
  USRBC has previously flagged the EAEU's questionable methodology in its safeguards investigation that resulted in a determination of serious injury and an overly restrictive measure on imports of combine harvesters. [See USRBC Submission of September 22, 2014.] The implementation of this measure has been problematic as well, as the measure has not been liberalized in accordance with WTO rules, and, in many cases, authorities have delayed granting import licenses for even the measure’s mandated level of imports.

  The measure is set to expire in August 2016, and while WTO rules allow for extensions of measures, USRBC would underscore that such an extension is permissible under WTO rules provided that the member provides proof of continued injury and evidence that the domestic industry is adjusting. Ultimately, with restrictions on imported combine harvesters such as the current measure, Russian farmers and consumers are being denied access to advanced technology and innovative techniques for smart and efficient agriculture as well as agricultural products at lower prices.
Government Procurement

While Russia has not yet acceded to the WTO’s Government Procurement Agreement, it requested and was granted observership in the WTO Committee on Government Procurement. USRBC also notes that at the time of its accession, Russia committed to initiate negotiations for membership in the WTO Agreement on Government Procurement within four years of accession. With the spirit of these commitments in mind, USRBC would like to encourage Russia to adopt non-discriminatory policies in procurement that allow its citizens access to a wider range of products and services, which could positively impact Russia’s economic growth:

Healthcare
In line with Russia’s interest in providing state of the art healthcare delivery in Russia and improving the lives of the Russian people, non-discriminatory policies in the healthcare arena would broaden the availability of essential goods such as medical technologies and pharmaceuticals. The Russian government is currently considering an expansion of the list of medical devices that are prohibited from government procurement tenders, which Russian healthcare NGOs have said would lead to a sharp decline in the quality of medical care in Russia.

Information Technology
The Russian government has instructed the Ministry of Communications and the Ministry of Industry and Trade to prepare by October 15 a draft regulation prohibiting federal, regional and municipal government agencies from procuring imported telecommunications equipment.

Separately, in July 2015, President Putin signed a new law that requires government agencies and state-owned enterprises to give preference to domestically-produced software and hardware products in procurement or to provide justification for decisions to purchase imported equipment.

Machinery.
The Russian government has prohibited federal, regional and municipal governments from purchasing certain types of imported transportation and construction equipment. For example, Prime Minister Medvedev issued a decree on July 14, 2014, that prohibits federal and municipal governments from purchasing imported vehicles for public transportation, emergency services and construction.

Conclusion
The U.S.-Russia Business Council appreciates this opportunity to provide its comments and looks forward to answering any questions the U.S. Trade Representatives or your colleagues in other agencies may have.